

Harry Colt, Esq; and Anne his
Wife, (one of the Daughters
of John Arnold, Esq; deceased.) Appellants.

{ Nicholas Arnold, Esq; and Ed-
ward Cook, Esq; Surviving } Respondents.
Trustee, & al

The Appellants C A S E.

Marriage
Settlement,
31 Aug.
1666.

1500l. the
Mother's
Portion.

1 Son and
4 Daughters.

Bill filed 27
June, 1707.

THAT the said *John Arnold* by his Deeds of Lease and Release, dated the 30th and 31st Days of August, 1666. on Consideration of Articles before Marriage, and 1500*l.* Portion paid with the said *Margaret* (which Marriage was after had) did settle and convey certain Mannors, Messuages and Lands therein contained, after the Deceases of the said *John Arnold* and *Margaret* his Wife, to *William Cook*, *Edward Cook*, and *Dennis Cook*, for the Term of 200 Years, in Trust that they should by Sale of the Premises, or out of the Rents and Profits thereof till Sale, and with the Rents and Profits of such Part as should remain unsold, raise Money for the Daughters Portions of that Marriage; if but one Daughter 2000*l.* if more 1000*l.* a-piece, to be paid at their Ages of 17, and Twenty Pounds a-piece, yearly, for their Maintenance in the mean time, from the Death of the Survivor of the said *John* and *Margaret*; and after those Sums paid, then the Trustees were to surrender the Term to such Person to whom the next Estate of Freehold expectant upon the determination of the Term should belong, in which Deed of Release there is a Proviso in the Words following.

PROVIDED always, That if the said *John Arnold* shall have Issue Male upon the Body of the said *Margaret*, begotten, that shall live to attain the Age of 21 Years, or shall Marry or if the said *John Arnold* shall have no Daughter by the said *Margaret*, or if such Person or Persons inheritable to the Premises so limited as aforesaid, for the raising of Portions for all and every the Daughters of the said *John Arnold* shall pay or cause to be paid to such Daughter and Daughters the several Sums of Money intended by these Presents, to be paid them for their Maintenance and Portions, at such time as the same shall become due and payable, according to the true Intent and Meaning of these Presents, that then the said Term of 200 Years shall cease, and be void to all Intents and Purposes whatsoever.

John Arnold had Issue by that Marriage, one Son and four Daughters, the Respondent *Nicholas Arnold* who has attained the Age of 21. The Appellant *Anne*, and Three other Daughters, that is to say *Margaret*, *Dennis*, and *Mary*, who have attained the several Ages of 17 Years and upwards; and the said *Margaret* has long since been paid her 1000*l.* Portion, and Maintenance Money.

The Appellants did Exhibit their Bill in the High Court of Chancery for Payment of *Anne's* 1000*l.* Portion and Maintenance Money, which coming to be heard; upon the hearing the Bill was dismissed, on pretence that the Term of 200 Years, the Security for the several Portions and Maintenance Money was determined by the Issue Males attaining to the Age of 21, by the before-mention'd Proviso.

WHICH PROVISIO the Appellants are advised is to be thus explain'd, in order to make all Parts of the Deed consistent, and Answer the Intention of the Parties, viz. That having a Son till he attains to the Age of 21, he shall not pay, which was in Favour and Advantage of the Heir; for during his Infancy, he is not capable of giving Security for Money, or if such Son Marries before 21, in that Case he is liable to pay, by reason of the Presumption of the Fortune he may have; and in Case there is no Son, if the next Heir Male that has the Inheritance shall pay, and after Payment made; or if there be no Daughter, then the Term (according to a distributive relation made suitable to the Subject matter) to cease; so that upon all Risques the Money is to be paid before the Ceasing of the Term if any Daughters, but the Proviso only expresses upon what Contingencies they are payable.

And tho' the payment of the Money be expressed only after the last Contingency, yet is the Relation so strong to the other Contingencies, by force of the Disjunctive (Or) as if the very Words, (shall pay or cause to be paid) had been expressed and repeated after every Contingency (that is, attaining the Age of 21 Years, or Marry) in which Case there could have been no manner of Dispute, but to explain it a Ceasing of the Term upon the first Contingency, is not only to thwart the apparent intention of the Settlement, and the Parties thereto, in Relation to the Daughters Portions, but to render useles and insignificant the very Substance and Intention of the Proviso against the express Words of the same, and the former Clause in the said Deed, which provides that the said Daughters Portions should be paid them at the respective Ages of 17 Years, which manifest the Intention of the Parties.

The Consequence whereof will be to expose the Appellants, (and the other Daughters younger Children of that Marriage, which is the highest Consideration in the Law, and 1500*l.* Portion paid, and for these Three Years past have been Maintained by the Charity of the Respondent, *John Dutton Colt*, their Father-in-Law) having nothing else to depend upon but the Charity of the World, or they must Perish, whilst the Respondent enjoys a plentiful Estate as Heir of such Marriage, viz. 1100*l.* per Annum in Possession 300*l.* more after his Mother's Decease, and 800*l.* more, in reversion upon Estates for Lives, the whole Debt and Legacies upon the said Estate about 10000*l.*

Note. That the Respondent has a Suite now at Issue in Chancery, to vacate all the Copy-hold Estates for Life, held under his Mannors, the Tenants offer him 10000*l.* to confirm their Estates; so that the Respondent or his Estate are not so incumbered as represented.

THEREFORE the Appellants humbly hope this Honourable House will Reverse the said Dismission, and that the Appellants may have the Provision designed them by the said Settlement.

W. Monnington.